IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

WEDNESDAY, THE 14TH MARCH 2007 / 23RD PHALGUNA 1928

RSA.No. 193 of 2007()

AS.39/2000 of ADDL. DISTRICT COURT, PATHANAMTHITTA
OS.77/1998 of SUB COURT, THIRUVALLA
.....

APPELLANT/ APPELLANT/PLAINTIFF

A.RAMACHANDRAN PILLAI,
S/O.LATE ACHUTHAN NAIR, MAROTTIKULATHU HOUSE,
EZHUMATTOOR VILLAGE, MALLAPALLY TALUK.

BY ADV. SRI.M.NARENDRA KUMAR
SRI.S.MOHANAN

RESPONDENT/ RESPONDENT/ DEFENDANT

D.BHARATHIAMMA, W/O.LATE
ACHUTHAN NAIR, MAROTTIKULATHU HOUSE,
EZHUMATTOOR P.O., MALLAPPALLY TALUK,
NOW RESIDING AT JAYA NIVAS, PALLICKAL P.O.,
KATTANAM MAVELIKKARA.

BY //

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON 14/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON I.A.NO. 407/07 IN RSA 193/07

DISMISSED

14/3/2007

SD/-M.SASIDHARAN NAMBIAR,JUDGE.

//True copy//

PA to Judge.

M.SASIDHARAN NAMBIAR,J.

R.S.A .NO.193 OF 2007

Dated 14th March 2007

J U D G M E N T

Plaintiff in O.S.77/1998 on the file of Sub court, Thiruvalla is the appellant. Defendant is the respondent. Appellant is the son of respondent. Suit was filed for specific performance of an oral agreement for sale. Case of appellant was that respondent mother agreed to sell plaint schedule property for a total consideration of Rs.1,25,000/- on 15/11/1996 and Rs.25,000/- was paid towards consideration and balance was agreed to be paid by 31/12/1996 and respondent agreed to execute the sale deed after receiving the balance consideration and on 31/12/1996 appellant paid Rs.1,00,000/- and last day for execution of the sale deed was fixed as 31/12/1996 and though appellant approached the mother to execute sale deed, she tried to avoid at the instance of the sister of appellant and therefore appellant filed the suit for specific performance of the agreement for sale. Respondent filed a written statement disputing

the oral agreement for sale as alleged by the appellant. It was contended that there was no agreement for sale at all and appellant had married a Christian lady who was the servant in their house and after his marriage they resided in the house of the wife of appellant and husband of respondent, the father of appellants did not accept the marriage and as per partition deed properties were divided and property of the appellant was sold in favour of respondent and her husband and after the death of her husband, sister of appellant executed a sale deed in respect of 3 acres of property in favour of appellant and appellant has executed a registered sale deed and to set aside the sale deed appellant filed O.S.554/98 before Munsiff court, Thiruvalla and respondent is residing with her daughter and appellant is not entitled to the decree for specific performance of agreement for sale. Learned Sub Judge framed necessary issues. On the side of appellant he was examined as PW1 and two witnesses, Pws.2 and 3 were also examined. Respondent was examined as DW1 and a witness was also examined as DW2. Ext.A1 partition deed and Exts.B1 to B3 were marked. Learned Sub Judge on the evidence found that the oral agreement for sale

alleged by appellant is not true and the assignment was not proved. It was therefore held that appellant is not entitled to the decree for specific performance of agreement for sale. Appellant challenged decree and judgment before District court, Pathanamthitta in A.S.39/2000. Learned District Judge after elaborately considering the evidence, confirmed findings of learned Sub Judge and dismissed the appeal. It is challenged in this second appeal.

2. Learned counsel appearing for appellant was heard. Argument of learned counsel appearing for appellant was that courts below did not properly appreciate the evidence and failed to note that after the death of father appellant was residing with respondent and though appellant married a Christian lady, thereafter he had sold the property in favour of father and mother and it is admitted by respondent that after the death of father sister of appellant had sold 3 acres of property in favour of appellant and appellant was residing with respondent and in the written statement itself it was admitted that she expressed her intention to sell the property and when the evidence is appreciated in this back ground, courts below should

have accepted the case of oral agreement for sale and on the evidence courts should have granted a decree for specific performance of agreement for sale.

3. Learned Sub Judge and learned District Judge appreciated evidence in the proper perspective. What was set up by the appellant was oral agreement for sale whereunder mother agreed to assign 65 cents of property in his favour for a total consideration of Rs.1,25,000/-. It was contended that oral agreement was entered into on 15/11/1996 and Rs.25,000/- was paid at that time and balance was agreed to be paid on or before 31/12/1996. It was also contended that pursuant to the agreement balance consideration of Rs.1,00,000/- was paid on 31/12/1996. As rightly found by courts below apart from the interested version of PW1, no other evidence was adduced to prove that there was either an oral agreement for sale or payment of consideration on two different dates. Courts below entered a finding of fact that on the basis of appreciation of evidence. It cannot be interfered in exercise of the powers under Section 100 of Code of Civil Procedure. On the evidence it can only be found that appellant did not establish oral agreement for sale. Hence appellant is not entitled

to the decree for specific performance of agreement for sale sought for. No substantial question of law involved in the appeal.

Appeal is dismissed in limine.

M.SASIDHARAN NAMBIAR,
JUDGE.

uj.